

98TH CONGRESS
1ST SESSION

S. 1324

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency.

IN THE SENATE OF THE UNITED STATES

MAY 18 (legislative day, May 16), 1983

Mr. GOLDWATER (for himself and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Select Committee on Intelligence

A BILL

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Intelligence Information Act of 1983".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) the Freedom of Information Act is providing the people of the United States with an important means of acquiring information concerning the work-

1 ings and decisionmaking processes of their Govern-
2 ment, including the Central Intelligence Agency;

3 (2) the full application of the Freedom of Informa-
4 tion Act to the Central Intelligence Agency is, howev-
5 er, imposing unique and serious burdens on this
6 agency;

7 (3) the processing of a Freedom of Information
8 Act request by the Central Intelligence Agency nor-
9 mally requires the search of numerous systems of
10 records for information responsive to the request;

11 (4) the review of responsive information located in
12 operational files which concerns sources and methods
13 utilized in intelligence operations can only be accom-
14 plished by senior intelligence officers having the neces-
15 sary operational training and expertise;

16 (5) the Central Intelligence Agency must fully
17 process all requests for information, even when the re-
18 quester seeks information which clearly cannot be re-
19 leased for reasons of national security;

20 (6) release of information out of operational files
21 risks the compromise of intelligence sources and
22 methods;

23 (7) eight years of experience under the amended
24 Freedom of Information Act has demonstrated that this
25 time-consuming and burdensome search and review of

1 operational files has resulted in the proper withholding
2 of information contained in such files. The Central In-
3 telligence Agency should, therefore, no longer be re-
4 quired to expend valuable manpower and other re-
5 sources in the search and review of information in
6 these files;

7 (8) the full application of the Freedom of Informa-
8 tion Act to the Central Intelligence Agency is per-
9 ceived by those who cooperate with the United States
10 Government as constituting a means by which their co-
11 operation and the information they provide may be dis-
12 closed;

13 (9) information concerning the means by which in-
14 telligence is gathered generally is not necessary for
15 public debate on the defense and foreign policies of the
16 United States, but information gathered by the Central
17 Intelligence Agency should remain accessible to re-
18 questers, subject to existing exemptions under law;

19 (10) the organization of Central Intelligence
20 Agency records allows the exclusion of operational files
21 from the search and review requirements of the Free-
22 dom of Information Act while leaving files containing
23 information gathered through intelligence operations
24 accessible to requesters, subject to existing exemptions
25 under law; and

1 (1) the full application of the Freedom of Infor-
2 mation Act to the Central Intelligence Agency results
3 in inordinate delays and the inability of these agencies
4 to respond to requests for information in a timely
5 fashion.

6 (b) The purposes of this Act are—

7 (1) to protect the ability of the public to request
8 information from the Central Intelligence Agency
9 under the Freedom of Information Act to the extent
10 that such requests do not require the search and
11 review of operational files;

12 (2) to protect the right of individual United States
13 citizens and permanent resident aliens to request infor-
14 mation on themselves contained in all categories of
15 files of the Central Intelligence Agency; and

16 (3) to provide relief to the Central Intelligence
17 Agency from the burdens of searching and reviewing
18 operational files, so as to improve protection for
 intelligence sources and methods and
 enable this agency to respond

19 to the public's requests for information in a more
20 timely and efficient manner.

21 SEC. 3. (a) The National Security Act of 1947 is
22 amended by adding at the end thereof the following new title:

1 "TITLE VII—RELEASE OF REQUESTED INFORMA-
2 TION TO THE PUBLIC BY THE CENTRAL IN-
3 TELLIGENCE AGENCY.

4 "DESIGNATION OF FILES BY THE DIRECTOR OF CENTRAL
5 INTELLIGENCE AS EXEMPT FROM SEARCH, REVIEW,
6 PUBLICATION, OR DISCLOSURE.

7 "SEC. 701. (a) In furtherance of the responsibility of the
8 Director of Central Intelligence to protect intelligence
9 sources and methods from unauthorized disclosure as set
10 forth in section 102(d)(3) of this Act (50 U.S.C. 403(d)(3))
11 and section 6 of the Central Intelligence Agency Act of 1949
12 (50 U.S.C. 403g), operational files located in the Directorate
13 of Operations, Directorate for Science and Technology, and
14 Office of Security of the Central Intelligence Agency shall be
15 exempted from the provisions of the Freedom of Information
16 Act which require publication or disclosure, or search or
17 review in connection therewith, if such files have been spe-
18 cifically designated by the Director of Central Intelligence to
19 be concerned with—

20 "(1) the means by which foreign intelligence,
21 counterintelligence, or counterterrorism information is
22 collected through scientific and technical systems;
23 "(2) foreign intelligence, counterintelligence, or
24 counterterrorism operations;

1 "(3) investigations conducted to determine the
2 suitability of potential foreign intelligence, counterintel-
3 ligence, or counterterrorism sources; and

4 "(4) intelligence or security liaison arrangements
5 or information exchanges with foreign governments or
6 their intelligence or security services;

be--

"(1) files of the Directorate of Operations
which document foreign intelligence or counter-
intelligence operations or intelligence or
security liaison arrangements or information
exchanges with foreign governments or their
intelligence or security services; or

"(2) files of the Directorate for Science
and Technology which document the means by
which foreign intelligence or counterintelligence
is collected through scientific and technical
systems;

"(3) files of the Office of Security
which document investigations conducted to
determine the suitability of potential foreign
intelligence or counterintelligence sources:

7 *Provided, however,* That nondesignated files which may con-
8 tain information derived or disseminated from designated
9 operational files shall be subject to search and review. The
10 inclusion of information from operational files in nondesignat-

11 ed files shall not affect the designation of the originating
12 operational files as exempt from search, review, publication,
13 or disclosure: *Provided further,* That the designation of any
14 operational files shall not prevent the search and review of
15 such files for information concerning any special activity the
16 existence of which is not exempt from disclosure under the
17 provisions of the Freedom of Information Act or for informa-
tion reviewed and relied upon in an investigation
by the intelligence committees of the Congress,
the Intelligence Oversight Board, the Office of
General Counsel of the Central Intelligence Agency,
the Office of Inspector General of the Central
Intelligence Agency, or the Office of the Director
of Central Intelligence for any impropriety, or
violation of law; Executive order, or Presidential
directive in the conduct of an intelligence
activity.

18 "(b) The provisions of subsection (a) of this section shall
19 not be superseded except by a provision of law which is en-
20 acted after the date of enactment of subsection (a), and which
21 specifically cites and repeals or modifies its provisions.

22 "(c) Notwithstanding subsection (a) of this section,
23 proper requests by United States citizens, or by aliens law-
24 fully admitted for permanent residence in the United States,
25 for information concerning themselves, made pursuant to the

1 Privacy Act of 1974 (5 U.S.C. 552a) or the Freedom of In-
2 formation Act (5 U.S.C. 552), shall be processed in accord-
3 ance with those Acts.

"(d) The Director of Central Intelligence
shall promulgate regulations to implement this
section as follows:

"(1) Such regulations shall require the appropriate
Deputy Directors or Office Head to:

(A) specifically identify categories of files under
their control which they recommend for designation;
(B) explain the basis for their recommendations; and
(C) set forth procedures consistent with the statutory
criteria in subsection (a) which would govern the
inclusion of documents in designated files. Recommended
designations, portions of which may be classified,
shall become effective upon written approval
of the Director of Central Intelligence.

"(2) Such regulations shall further provide
procedures and criteria for the review of each
designation not less than once every ten years
to determine whether such designation may be
removed from any category of files or any portion
thereof. Such criteria shall include considera-
tion of the historical value or other public

interest in the subject matter of the particular category of files or portion thereof and the potential for declassifying a significant part of the information contained therein.

"(e)(1) On the complaint under section 552(a)(4)(B) of title 5 that the Agency has improperly withheld records because of improper designation of files or improper placement of records solely in designated files, the court's review shall be limited to a determination whether the Agency regulations implementing subsection (a) conform to the statutory criteria set forth in that subsection for designating files unless the complaint is supported by an affidavit, based on personal knowledge or otherwise admissible evidence, which makes a prima facie showing, that (A) a specific file containing the records requested was improperly designated; or (B) the records requested were improperly placed solely in designated files. If the court finds a prima facie showing has been made under

this subsection, it shall order the Agency to file a sworn response, which may be filed in camera and ex parte, and the court shall make its determination based upon these submissions and submissions by the plaintiff. If the court finds under this subsection that the Agency's regulations implementing subsection (a) of this section do not conform to the statutory criteria set forth in that subsection for designating files, or finds that the Agency has improperly designated a file or improperly placed records solely in designated files, the Court shall order the Agency to search the particular designated file for the requested records in accordance with the provisions of the Freedom of Information Act and to review such records under the exemptions pursuant to section 552(b) of title 5. If at any time during such proceedings the CIA agrees to search designated files for the requested records, the court shall dismiss the cause of action based on this subsection.

"(e)(2) On complaint under section 552(a)(4)(B) of title 5 that the agency has improperly withheld records because of failure to comply with

the regulations adopted pursuant to subsection (d)(2), the court's review shall be limited to determining whether the agency considered the criteria set forth in such regulations."

- 4 (b) The table of contents at the beginning of such Act is
5 amended by adding at the end thereof the following:

~~TITLE VII—RELEASE OF REQUESTED INFORMATION TO THE PUBLIC BY THE CENTRAL INTELLIGENCE AGENCY~~

"Sec. 701. Designation of files by the Director of Central Intelligence as exempt from search, review, publication, or disclosure."

- 6 SEC. 4. The amendments made by section 3 shall be
7 effective upon enactment of this Act and shall apply with
8 respect to any requests for records, whether or not such re-
9 quest was made prior to such enactment, and shall apply to
10 all cases and proceedings pending before a court of the
11 United States on the date of such enactment.